

## **REMARKS**

Applicant amends claim 1 and claims 1-5 are pending in this application. Applicant respectfully requests allowance of all the pending claims.

### **Claim Rejections – 35 U.S.C. §103(a)**

The Examiner rejects claims 1-5 under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 5,758,464 (“Hatton”) in view of United States Patent No. 5,002,620 (“King”).

Claim 1 recites a retaining wall including a base and a wall assembly supported on the base. The base is formed from a first row of building blocks and the wall assembly includes a plurality of vertically stacked rows of building blocks formed of fiber reinforced cellular cementitious material, which has a consistency that permits fasteners to be driven into the building blocks in the same way that conventional lumber fasteners are driven into lumber. The wall assembly includes a front face and a rear face and a plurality of spaced apart elongated vertically extending reinforcing strips fixed to one of the front face and the rear face. The reinforcing strips are each secured to the wall assembly by a plurality of fasteners. Each of the fasteners is either a nail or screw extended through one of the reinforcing strips and driven directly into one of the building blocks to mechanically join the reinforcing strip and the building block together. Each of the fasteners is of the type used with conventional lumber. Each of the fasteners is driven into the building blocks in the same way that conventional lumber fasteners are driven into lumber.

With reference to Figs. 1-4, Hatton discloses a wall construction including a concrete block wall (20) and Z-furring strips (15) fixedly secured to wall (20) through the use of masonry nails, Tapcon<sup>®</sup> screws, or other equivalent fasteners of the type commonly used with conventional concrete. The vertically oriented Z-furring strips (15) accommodate the installation of rigid thermal insulation panels (10) while providing an attachment location for gypsum board (24).

King discloses using fiber reinforced cellular concrete for concrete blocks and other building materials.

The Examiner submits that it would have been obvious to one having ordinary skill in the art to substitute the concrete blocks of Hatton with the fiber reinforced cellular concrete blocks of King and that this combination teaches all of the limitations of the claims.

Applicant respectfully submits that even if the references can be combined as identified by the Examiner, the proposed combination does not teach or suggest all of the limitations of the claims.

For example, Hatton and King, alone or in combination, do not teach or suggest a cellular cementitious material having a consistency that permits fasteners to be driven into the building blocks in the same way that conventional lumber fasteners are driven into lumber. Rather, Hatton discloses using concrete blocks, which, according to Hatton, is made of a material having the consistency to permit only specialized masonry fasteners to be driven in. The concrete blocks will not permit fasteners to be driven in the same way as conventional lumber fasteners are driven into lumber. King does not teach or suggest the use of any fasteners whatsoever and therefore does not cure the deficiencies of Hatton.

The high-performance fiber reinforced cellular concrete products of the present invention possess enhanced workability characteristics similar to conventional lumber thereby allowing nails and screws that are used with conventional lumber to be driven directly into the fiber reinforced cellular concrete. Prior to the present invention, the physical characteristics of cellular concrete products did not allow these advantages.

As another example, Hatton and King, alone or in combination, do not teach or suggest using a nail or screw of the type used with conventional lumber. Rather, Hatton discloses using fasteners of the type used with conventional concrete such as masonry nails and Tapcon<sup>®</sup> screws. King does not teach or suggest the use of any fasteners whatsoever and therefore does not cure the deficiencies of Hatton.

In addition, the Examiner states that fasteners used with lumber and masonry fasteners are functional equivalents. Applicant respectfully disagrees and submits that it would not have been obvious for one of ordinary skill in the art to substitute lumber fasteners for concrete fasteners because each type of fastener is specifically designed to work with the individual characteristics of either concrete or lumber. Accordingly, lumber fasteners would not work with conventional concrete due to the different structural characteristics of concrete as compared to lumber. Further, the Examiner has failed to provide any teaching to motivate one of ordinary

skill to use the specialized masonry fasteners of Hatton as a substitute for fasteners used with materials exhibiting the qualities of conventional lumber product.

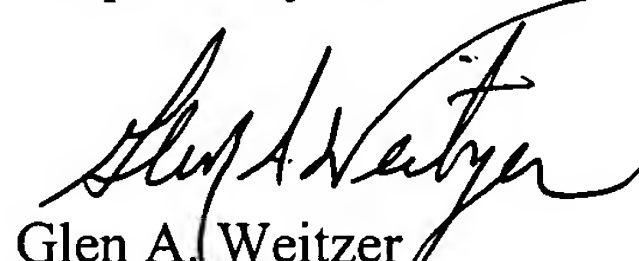
For these reasons, Hatton and King, alone or in combination, do not teach or suggest all of the claim limitations of claim 1. Therefore, Applicants respectfully submit that the Examiner has failed to present a *prima facie* case of obviousness of claim 1 based upon the prior art as required by 35 U.S.C. §103.

Accordingly, claim 1 is allowable. Claims 2-5 depend from allowable independent claim 1 and are therefore also allowable for these and other reasons.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-5 and allowance of claims 1-5.

The Examiner is invited to contact the undersigned attorney should the Examiner determine that such action would facilitate the prosecution and allowance of the present application.

Respectfully submitted,



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